

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Allen Morgan, #085360

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 22-ALJ-04-0157-AP

ORDER OF DISMISSAL

RECEIVED

DEC 08 2022

SC Court of Appeals

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Allen Morgan (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (the Department or SCDC). Appellant filed a step 1 grievance, identified as TYRCI-0037-22 and dated February 25, 2022, in which he contended that the Institutional Protective Custody Committee (IPCC) improperly made a finding of "invalid." Appellant referenced that (1) someone previously tried to poison him and that this was mumbled into the record, (2) "inmate Lowery"¹ was scheming to encourage the Department's personnel to remove him from the Character Based Unit (CBU) to another location in which he could be physically harmed, and (3) the Department's personnel failed to address the fact that Appellant's pin number had been stolen and "harmful information [was] being widely disseminated." Appellant stated that the protective custody review failed to review "messages to Chaplin" and the Investigations Department, and papers filed with the Contraband Department. According to Appellant, statements from the Restrictive Housing Unit (RHU) captain were hearsay, speculative, and improperly motivated. Moreover, Appellant contend "[t]he bar-for [a] valid finding of IPCC [is] too high." Appellant's requested relief was for the Department's personnel to "[r]efer complete record include kiosk messages from 2018 to" be considered for state-wide protective custody (SWPC).² The warden denied the step 1 grievance because SCDC

¹ Appellant referenced inmates Lawler and Carpazzi as individuals who "could implement physical harm to" him.

² Behind the copy of the step 1 grievance in this matter that was submitted to the Court in this matter, Appellant also attached a step 2 grievance dated May 25, 2022, and with a grievance



records showed an "IPCC review was performed and [Appellant] did not provide any [credible] threats, names or incidents and failed to meet the standards required by policy."

Appellant filed a step 2 grievance dated March 16, 2022. In his grievance, Appellant challenged the Department's policy and IPCC's finding of "invalid." According to Appellant, the Department failed to fully investigate the information on the record. He contended he was not "notified of the any hearing nor asked to provide any additional information [to] the IPCC." Appellant asserted that he has suffered in "a harmful environment."

The responsible official denied Appellant's grievance on April 26, 2022. The responsible official issued the following statement:

Agency records indicate that you failed to provide evidence to the board during your hearing that could substantiate your claim that there was a credible threat against you. Furthermore, you did not provide any names of the inmates threatening you until your submission of this grievance. All pertinent information regarding your request for SWPC should have been disclosed during the IPCC review and not through the Inmate Grievance System.

On May 31, 2022, Appellant filed his notice of appeal with the Court. Appellant raised the following arguments: (1) the decisions from his grievances ignore the incidents and growing dangers; (2) if the evidence was viewed properly, then there was a valid reason for protective custody; (3) kiosk records should have been considered; (4) the Department's personnel mishandled information; (5) if Appellant had known of the meeting for his evaluation, he could have presented more information; and (6) the Department should have forwarded Form 1947 to the state classification review, which limited due process.

This matter was assigned to the undersigned on June 9, 2022. On July 1, 2022, Appellant filed a letter with the Court, asking about the notice of assignment, informing the Court that he had been transferred to Evans Correctional Institution (ECI), and raising concerns about ECI. On July

number of TYRCI-0072-22. In this grievance, Appellant stated that after speaking with a grievance coordinator, he received a copy of Form 19-47. According to Appellant, he learned that his due process rights were violated because his "case was not forwarded to central classification for their review within" seven days according to policy OP 22.23. He contended that if policy had been followed, he would have received notification about his institutional classification. Appellant broadly stated that procedures were not followed, his need for SWPC was disregarded, and evidence was ignored. The responsible official did not process Appellant's grievance because inmates "are not allowed to file a [s]tep 2 [g]rievance on a [g]rievance that has been processed and returned." Appellant wrote a note below the responsible official's statement.

11, 2022, the Court wrote Appellant about his letter. The Court noted the notice of assignment was filed on June 9, 2022, and was sent to Appellant at Tyger River Correctional Institution (TYRCI). On June 28, 2022, the notice of assignment was returned to the Court; on the same day, the Court sent a copy of the notice of assignment to Appellant at ECI. The Court updated Appellant's address and informed Appellant that the issues in this matter are limited to the grievance that was being appealed.

On August 19, 2022, the Department filed the record on appeal. On September 7, 2022, Appellant filed his brief in this matter.³ In his brief, Appellant requested to be housed at "Kirkland Cadre Inmate Worker Program as it is off the path of [g]eneral [p]opulation."

On October 3, 2022, the Department filed a motion to dismiss pursuant to *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004), and *Skipper v. South Carolina Department of Corrections*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006), arguing that Appellant has no state-created liberty or property interest in "a particular security or custody status as long as the security or custody status does not implicate a constitutional right or exceed the limits of his sentence." The Department requests that if the Court denies its motion, that the Court allow the Department an additional thirty (30) days to file and serve its brief in this matter.

On October 6, 2022, Appellant filed a response to the Department's motion to dismiss. According to Appellant, he has a state-created liberty interest in his safety, well-being, and life. Appellant asserts this is based in the Department's mission statement, the South Carolina Constitution, and the United State Constitution. Appellant contends his "rightful place is on parole" but "next would be any [d]esignated [f]acility [p]rison or any level one prison." Appellant also believes Kirkland Correctional Institution (KCI) is the "best decision to remedy the whole

³ Appellant listed the following issues in his brief: (1) "Why did the [IPCC] ignore the evidence of my need for [p]rotective [h]ousing?"; (2) "Why did Capt. Jason Weller fail to include in his initial incident report (Pg. 6 of transcript) that there was a safety concern as a result of me being moved. (see pg. 22 Transcript)[?]" (3) "Why are the deliberations portions of the hearing not included in the transcript[?]" (4) "Why is the hearing dated December 17, 2022[,] and reiterated in/on transcript? (Pg. 19 of 29)[?]" (5) "Also on same page (pg. 19 of 29) the members are identified—why did Capt. Moore enter at deliberations and could be heard speaking to the committee[?]" (6) "Why is the synopsis mentioned on (page 21) not included in the record on appeal[?]" and (7) "Why so many references to me moving or not moving to unit 8 from lockup—when the unit assignment is frequently negotiated for most inmates[?]"

situation," and he references a variety of situations in which he claims he has been wronged by others.

DISCUSSION

The Court generally has jurisdiction to hear inmate appeals that have been properly filed and served. *See generally* S.C. Code Ann. § 1-23-600(D) (Supp. 2021); *see also Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 757 (2000) (stating the ALC's jurisdiction in inmate appeals is generally limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing because of a serious rule violation); *Slezak*, 361 S.C. at 331, 605 S.E.2d at 508. However, the Court may summarily dismiss an inmate's appeal when the appeal does not implicate state-created liberty or property interests, or when the inmate is not subjected to atypical and significant hardships. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 507 (explaining summary dismissal is appropriate when "the inmate's grievance does not implicate a state-created liberty or property interest"); *id.* (explaining the Due Process Clause is only offended when an inmate is subjected to "atypical and significant hardships in relation to ordinary incidents of prison life" (citing *Sandin v. Conner*, 515 U.S. 472, 484 (1995))); *Skipper*, 370 S.C. at 272-74, 633 S.E.2d at 913-14.

"The federal constitution vests no liberty interest in inmates in retaining or receiving any particular security or custody status as long as the challenged conditions or degree of confinement are within the sentence imposed and are not otherwise violative of the Constitution." *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996). "Within these limits, so far as the federal constitution is concerned, the security and custody classification of state prison inmates is a matter for state prison official discretion whose exercise is not subject to federal procedural due process constraints." *Id.* "Courts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions." *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757. "The Constitution does not require that the State have more than one prison for convicted felons; nor does it guarantee that the convicted prisoner will be placed in any particular prison, if, as is likely, the State has more than one correctional

institution." *Meachum v. Fano*, 427 U.S. 215, 224 (1976). "[A]n inmate has no justifiable expectation that he will be incarcerated in any particular prison within a State" *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983).

As an initial matter, Appellant's requested relief has shifted during the course of the grievance process and on appeal. Initially, during the grievance process, Appellant sought SWPC. However, in his brief, Appellant's requested relief shifted to wanting to be housed at KCI as part of a specialized program.⁴ In his response to the Department's motion to dismiss, Appellant's relief again shifted: He asserted his "rightful place is on parole" but "next would be any [d]esignated [f]acility [p]rison or any level one prison"; Appellant again mentioned KCI.

To be preserved for review, an issue must be raised to the Department during the grievance procedure. See *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 324, 785 S.E.2d 600, 611 (Ct. App. 2016) ("An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC."); *id.* (affirming the ALC's determination that an issue was not proper when it was not included in the grievances); *Young v. S.C. Dep't of Health & Env't Control*, 383 S.C. 452, 458, 680 S.E.2d 784, 787 (Ct. App. 2009) ("A court has a limited scope of review of the final decisions of administrative agencies and cannot ordinarily consider issues that were not raised to and ruled on by the agency from which an appeal is taken."). Appellant certainly has not asserted to the Department throughout this litigation that he should be at KCI, on parole, or at "any [d]esignated [f]acility [p]rison or any level one prison." If the Court reached the merits of these claims after the briefing process was complete, the Court would not grant the requested relief because the arguments would not be preserved. Additionally, the Court has no authority to grant Appellant parole; parole is a privilege, and not a right that is determined by the parole board—not the Court. See *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008) ("The parole board, however, has the sole authority to determine parole eligibility separate and apart from the court's authority to sentence a defendant.").

⁴ The Court notes Appellant also requested to be placed in this type of program in an inmate request dated January 24, 2022, that appears on page 10 of the record on appeal. However, Appellant did not specifically reference this in his step 1 grievance. He in fact referenced Kiosk Ref. No. 22-02509340, which is on page 11 of the record on appeal. In his step 1 grievance requested relief, Appellant referenced that he broadly wanted all kiosk messages from 2018 used in consideration for SWPC—not that he was presently seeking to be placed at KCI.

Moreover, as fully set forth in the case law cited above, Appellant has no justifiable expectation in being housed at any particular institution during his incarceration. *See, e.g., Olim*, 461 U.S. at 245 ("[A]n inmate has no justifiable expectation that he will be incarcerated in any particular prison within a State . . ."). Simply because Appellant wants to be placed in a specific worker program at KCI, at "any [d]esignated [f]acility [p]rison[,] or [at] any level one prison," that does not mean that the Department is obligated to place Appellant there or that Appellant has a state-created liberty interest in that placement.

Finally, the issues set forth in the grievances that are on appeal have become moot during the pendency of this appeal. "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). "If there is no actual controversy, this Court will not decide moot or academic questions." *Id.* "The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation. Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review." *Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981). Appellant initially requested to be placed in SWPC prior to his current grievances that are on appeal. During the grievance process, Appellant disclosed that he was being purportedly threatened by two inmates who were evidently also incarcerated at TYRCI.⁵ During the course of this appeal, Appellant was transferred to ECI—evidently away from inmates Lawler and Carpazzi who were housed at TYRCI. There is no evidence or statements by Appellant or the Department that Lawler and Carpazzi are now at ECI. Accordingly, the stated grounds for SWPC in Appellant's grievances have now become moot. *See Sloan.*, 369 S.C. at 26, 630 S.E.2d at 477 ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.").⁶

⁵ The Court notes that in the record on appeal, Appellant referenced issues at prior institutions, but the Court is focused on the grievances at TYRCI. Moreover, the Court notes the prior institutions referenced in the record on appeal did not include ECI, which is where Appellant is currently housed.

⁶ The Court certainly recognizes factual situations in which the need for SWPC could transcend an inmate's placement at a new correctional institution. For example, if there were some sort of

ORDER

IT IS THEREFORE ORDERED that this matter is **DISMISSED WITH PREJUDICE.**
AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

November 2, 2022
Columbia, South Carolina

organized group that had threatened Appellant and that group also had a presence at ECI, that could serve as a continued need for SWPC even though Appellant had been moved to a new institution. However, that type of factual scenario has not been presented here throughout this litigation.

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

November 2, 2022
Columbia, South Carolina